

MINUTES
IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND
PROGRAM

August 27, 2008

COMMISSIONER'S CONFERENCE ROOM
IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET
DES MOINES, IOWA

Angela Burke-Boston, sitting in for Chairperson Susan Voss, called the Iowa UST Board meeting to order at 10:00 A.M. A quorum was present. Roll call was taken with the following Board members present:

Nancy Lincoln (via telephone)
Doug Beech
Jim Holcomb
Jeff Robinson
Kyle Rice (for Michael Fitzgerald)

Also present were:

David Steward, Attorney General's Office
Jacob Larson, Attorney General's Office
Scott Scheidel, Program Administrator
James Gastineau, Program Administrator's Office
Lacey Skalicky, Program Administrator's Office
Brian Tormey, Iowa Department of Natural Resources
Elaine Douskey, Iowa Department of Natural Resources

Stephen Larson joined the meeting by conference-call momentarily to notify the other Board members that Kyle Rice would represent the Treasurer's Office for this meeting, as Mr. Larson was traveling.

APPROVAL OF PRIOR BOARD MINUTES

The minutes from the July 8, 2008 Board meeting were reviewed. Mr. Beech moved to approve the minutes, Mr. Holcomb seconded the motion, and by a vote of 4-0, the minutes were approved.

CLOSED SESSION

Ms. Burke-Boston noted there were no matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21. No closed session convened.

PUBLIC COMMENT

There was no public comment from anyone present.

BOARD ISSUES

A. FY08 Budget Revision

Mr. Scheidel presented the Board with a revised FY08 budget. He noted that the Board agreed to revise the FY08 budget based on very large disbursements involved with the payoff of 1997A Series bonds and the defeasance of 2004A Series bonds, as necessitated by the TIME 21 legislation passed during the 2008 Session. The items that were changed from the previously approved budget had asterisks next to them. The items that were budgeted for occurrence during FY08, but were not realized until after the fiscal year end, had an “o” to mark them, as well. Mr. Holcomb submitted a motion to approve the revised FY08 budget, and Mr. Beech seconded the motion, which was approved by a vote of 4-0.

B. FY09 Budget

Mr. Scheidel next presented the Board with a budget for FY09 based on actual year end balances, which were not available to the Administrator’s Office in time for the July 8th meeting. He noted that because two items were not realized during the FY08 budget year, they were listed again on the FY09 budget. Mr. Holcomb submitted a motion to approve the FY09 budget, and Ms. Lincoln seconded the motion, which was approved by a vote of 4-0.

C. FY09 Goals Discussion

Mr. Scheidel presented a document outlining the Board’s goals for the new fiscal year. The goals set included the following:

- The net closure of 140 claims
- To hold 100 corrective action meetings
- To set a meeting with Legislative and Executive policy makers to review IUST program and future potential
- To seek change to Iowa Code Section 455G.6 to extend its expiration date from 6/30/09 to 6/30/14 to coincide with the sunset of funding
- To enter into an agreement with DNR for the handling of no further action (NFA) certificate-holding sites which still pose unreasonable risk from an eligible release

Mr. Scheidel noted that many goals from fiscal year 2008 were not completed due to lack of cooperation between the Board and the Department of Natural Resources (DNR). He offered the list of goals for FY09 for Brian Tormey to comment about DNR commitment to any of those goals. Pending goals and action items from the Board document included the following:

- Complete the implementation of the recalibrated Tier 2 Model
- Complete joint evaluation of plastic water line information including studies, actual experiences in Iowa, and information from other states to develop policies and rules consistent with the results of the evaluation
- DNR discussion at the 8/27/08 IUST Board meeting regarding other risk based corrective action (RBCA) calibrations regarding areas including soil gas methodology, sewers as receptors, surface water restrictions and the capturing effect of time on historical releases
- DNR report to the Board how it currently handles low risk sites, and identify the parameters that should keep a site open beyond a reasonable monitoring period in the absence of significant changes

Mr. Tormey explained that Ms. Douskey had a handout for Board members to review which outlined the DNR goals and objectives for FY09, and invited the Board to identify opportunities for cooperation to meet goals in common. He stated that the DNR previously agreed to meet the numerical goals of site closure and corrective action meetings. And he asked Ms. Douskey to run through the DNR list.

Ms. Douskey explained that she handed out two documents, one of which reported the FYE numbers for leaking underground storage tank (LUST) inspections, UST inspections, UST audits, UST deficiency inspections, etc, for Board review. Next, she addressed the DNR UST program priorities for FY09. The LUST section goals included its Environmental Protection Agency (EPA) commitment to closing 125 sites as no action required (NAR) within the Federal Fiscal Year 2009 (FFY09), which begins 10/1/08. She made note that the number may be pushed higher by EPA if additional national funding can be secured. Another goal was to host approximately 100 corrective action meetings during FY09. The third LUST goal was to begin use of the new Tier 2 model with the water supply well evaluation procedures as proposed in the Chapter 135 rule by DNR; however this goal was dependent upon the outcome of Administrative Rule Review Committee (ARRC) negotiations regarding the rule. The fourth DNR priority was to move stalled sites to by developing a procedure to address compliance issues including overdue reporting or no corrective action implementation. She explained that the new attorney position at the DNR was expected to assist in that effort of enforcement. The fifth DNR priority included the development of a summary of findings from the review of available research on the permeability of plastic water lines to petroleum, and Ms. Douskey said a subgroup had been formed to perform the task. The sixth LUST goal involved internal discussions of low risk site alternatives, initially short of a rule change, but if necessary consideration of a rule change regarding exit monitoring criteria and duration. Ms. Douskey reported that the DNR was able to close out approximately 100 low risk sites in the past year.

Next, Ms. Douskey outlined the UST section goals including the Chapter 134 and 135 rule changes, as well as, owner/operator training program development, as required by the Energy Policy Act by August 2009. Also the DNR planned to continue development of its third party

inspector program and database, stating the first permanent certification of third party inspectors was completed in August. Also, she explained that the UST installer program development was a priority to host contractor training and exams and approve training for UST installers, and to change some of the rules for the program.

Ms. Douskey noted that other DNR goals included the 28E agreement with the Board regarding NFA sites, legislation regarding tank management fees, working with field offices to complete LUST site inspections, UST inspector audits and compliance deficiency follow-up inspections of UST facilities, and follow up on temporarily closed UST's. Lastly, Ms. Douskey reported DNR's list of items for the Board to consider as goals. She stated that owners, operators, and landowners would benefit from the Board distributing outreach materials with eligibility criteria and documentation requirements to qualify for innocent landowner, remedial, or global settlement benefits. Also, she recommended the Board implement more pay for performance contracting or find out how to make that method work better. And she listed that the Board could change the statute to allow for cleanup at select low risk sites thereby getting those sites to closure sooner; although she mentioned that request was somewhat "out on a limb." She also cited support for expedited free product recovery efforts and support for training from the Interstate Technical Resource Council's vapor intrusion course as goals for Board consideration. She noted the ITRC 2-day training course was rumored to be helpful regarding vapor pathway evaluation.

Mr. Scheidel inquired about the measurability of the DNR's goals or how would the DNR quantify the completion of its goals. Mr. Tormey mentioned that the DNR would potentially have a written policy or guidance or possibly rule change proposal in place regarding how to address long-standing low risk sites, for example. Mr. Beech asked DNR to quantify the plastic water line research goal by stating more boldly that it could be resolved by fiscal year end. Mr. Tormey stated the Board might in turn outline in the FY09 funding agreement how it would assist the DNR with meeting its goals. Mr. Scheidel clarified that the 28E agreement for FY09 funding would include DNR commitment to similar goals with the Board in exchange for funding. Mr. Scheidel inquired if DNR staff had considered the specific RBCA calibrations regarding soil gas methodology, sewers as receptors, surface water restrictions, and the capturing effect of time on old releases. Mr. Tormey stated that DNR staff was more focused on getting the current RBCA recalibration of the model rule approved before targeting specific areas within the guidance. He noted that staff was prepared to delve into the plastic water line review, as well as, the low risk sites resolution discussion first before contemplating additional target items for discussion. Mr. Tormey stated the DNR staff had a full plate of activities for this fiscal year. He also stated he would like to have details regarding low risk sites that had stalled. Mr. Scheidel stated he could readily compile a list of such sites using DNR data for DNR review. He also felt that he had a better idea of how to further develop the 28E agreement for DNR funding for FY09.

D. 28E – DNR Funding FY08 & FY09

Mr. Scheidel provided a copy of the FY08 funding 28E agreement between the Board and the DNR reporting that it was completed and signed with the Iowa UST Fund transferring \$229,727.00 to the DNR to meet its budget shortfall for FY08 and to meet its requirements to

secure FY09 Federal grants. He noted the delay due to the late receipt of tank management fees (on 8/8/08), which were to be paid under statute by fiscal year end (6/30/08). Also, Mr. Scheidel explained that the FY09 agreement was still being drafted, and he would bring an agreement to the Board in September, with quantifiable DNR goals integrated. Mr. Beech stated that his opinion was that no funding should be agreed to until such time as the often discussed pending rule changes regarding the Tier 2 model were fixed to address the Board's concerns.

E. NPDES Permits

Mr. Gastineau reviewed a memo to the Board regarding the National Pollutant Discharge Elimination System (NPDES) permit program. He explained that the federal program was delegated to the State to regulate the direct discharge of wastewater, and the facilities that produced such waste were required to comply with the requirements of a permit before discharging waste into surface waters. He stated that LUST site remediation systems were exempted by DNR policy from being regulated and having to comply with NPDES permitting requirements. The policy was based on the idea that DNR staff reviewed plans for remedial systems to determine if the discharge would be limited to the parameters and concentrations identified in a DNR position paper. And if any contaminants beyond gasoline were present, the DNR would enforce the compliance with NPDES permit requirements.

Mr. Gastineau explained that in rare cases, as occurred at a recent LUST site, the petroleum contaminants that remain at the site after a NAR was achieved could be inadvertently captured and discharged through a sump system. In that particular case, routine sampling of a sump revealed petroleum contamination in the discharge to surface water, and although the site posed no environmental risk, the NPDES permit requirements remained for treatment and monitoring of the discharge. Mr. Gastineau recommended the Board adopt a policy, as none was currently in place, to provide funding to an eligible claimant to obtain a NPDES permit as may be required for any discharge related to a remediation system installed at a LUST site per DNR regulations. And further he recommended that the board shall not provide funding, unless authorized specifically by the Board, for claimants to obtain a NPDES permit as required for ongoing business operational activities such as sump pumps. Also, he recommended the Administrator be authorized to enter a settlement agreement providing to any claimant that had received benefits inconsistent with the new policy a final reimbursement of costs incurred to date. Mr. Gastineau stated that he was unaware of any other LUST sites that required a NPDES permit.

After brief discussion, Mr. Beech submitted a motion to approve the full recommendation of the administrator regarding compliance of NPDES permit requirements at LUST sites, and Mr. Holcomb seconded the motion. Approved 4-0.

F. Tank Removal Rules and Settlements

Mr. Scheidel updated the Board about the UST removal rule stating the rule had become effective as adopted by the Board. He noted the rule had been amended to include more LUST sites for eligibility to remove UST's in a timely manner to benefit the environment. The current issue before the Board involved settlement agreements previously entered into by the Board to settle claims at sites. He noted that three claimants had approached the Board for UST removal

benefits after previously releasing the Board by settlement agreement for any future benefits. Two of three sites involved new owners of sites who purchased from Coastal Mart, which previously released the Board with regard to these sites. The Board discussed the responsibility of the buyer to build the cost of UST removal into the sale price, as UST removal was an inevitable cost. The third claimant had released the Board through a loss portfolio transfer (LPT) settlement, and had an expectation of receiving benefits that were put into place following the settlement agreement. The Board discussed the precedent that would be set by altering the terms of any settlement agreement previously completed or to be completed in the future. If the settlement terms were not to be final, then Board liabilities would never cease. Mr. Scheidel brought the issue to the Board for discussion to confirm the will of the Board agreed with the terms of the settlements. Mr. Steward noted that no action was needed unless the Board wished to alter the terms of those agreements, which were expressly final. The consensus of the Board was to not amend the agreements in any way.

G. SIC Model Calibration Update

Mr. Scheidel reported that the Administrative Rules Review Committee (ARRC) had voted for a 70-day delay at its last meeting with regard to the DNR's proposed rule for the recalibration of the RBCA Tier 2 model. The delay was based on the concerns of industry-related interested parties who were not in favor of the expansion of the rule by DNR to include items beyond the recalibration of the model itself. Mr. Scheidel explained that he met with Wayne Gieselman of DNR management to discuss a compromise, and was later joined by Pat Rounds with Petroleum Marketers Management Insurance Company to further discuss a solution that would be mutually agreeable. Mr. Scheidel reported that Mr. Gieselman seemed agreeable to Mr. Scheidel's proposal to study sites of concern by DNR staff; the study would be funded by the Board through a 28E agreement, as proposed in April to DNR. He pointed out that the new rule, as proposed by DNR, was set to become effective on 10/16/08. He stated that next meeting before the ARRC was scheduled for 9/9/08 for either approval or delay, and then another meeting was set for 10/14/08. As a result of the timing, Mr. Scheidel pointed out that negotiations with regard to the study and the 28E agreement for it needed to be resolved quickly. He explained that the agreement would lay out the idea that if the study resulted in the need for additional work at a LUST site, the Fund's eligible and open claims benefits would pay for the cost, and the Fund's NFA claims benefits would cover at a LUST site that had previously received a NFA certificate. He stated he felt the agreement should stop short of placing a regulatory burden on the public if an unreasonable risk was found. Therefore, Mr. Scheidel was waiting for a response from the DNR about the agreement points so far.

Mr. Beech voiced his opinion that he would not vote to approve any FY09 funding agreement for DNR if the issue of the proposed RBCA rule and the fine points of the compromise agreement were not resolved. He also stated that he would like to fully understand the cost of the study to the Board before committing to a specific amount payable to the DNR for FY09. Mr. Tormey reported that Mr. Gieselman had forwarded the agreement to the water supply interest groups for review.

H. Administrator Contract Renewal

Mr. Steward reviewed with the Board the terms of the administrator's contract with Aon that was entered into in 2004 for two years with up to 4 one-year extension options. He noted this renewal discussion centered on the third extension for calendar year 2009. Mr. Steward stated that the current contract terms would be extended for one more year, with an increase of 5% in compensation, as written into the original contract agreement. He noted that there had been a decrease in compensation due to the transfer of the UST installer/inspector licensing program to the DNR. He also explained that there could be an additional reduction in compensation at any time the Loan Guarantee Program closes out, as well as, when the number of claims has been reduced by 50% from the time of the original contract.

Mr. Beech moved to approve the one-year extension of the administrator's contract with Aon, and Mr. Holcomb seconded the motion, which was approved by a vote of 4-0.

I. DNR Update

Ms. Douskey noted that there was nothing further to report from the DNR.

PROGRAM BILLINGS

Mr. Scheidel presented the current monthly billings to the Board for approval.

1. Aon Risk Services.....\$122,726.00
Consulting Services – September 2008 (\$57,513.00)
Claims Processing Services – September 2008 (\$55,213.00)
2. Attorney General's Office.....\$1,534.67
Services provided for June 2008
3. Nancy Lincoln.....\$112.32
Mileage reimbursement to travel to 5/22/08 Iowa UST Fund Board meeting
in Des Moines
4. Nancy Lincoln.....\$138.06
Mileage reimbursement to travel to 7/8/08 Iowa UST Fund Board meeting
at Neal Smith National Wildlife Refuge
5. Iowa Department of Revenue\$1,425.78
Environmental Protection Charge collections Apr-Jun 2008
6. Officer of Auditor of State.....\$4,876.00
Audit services performed during FY08 for Iowa UST Fund
Accounting of FY07
7. Aon Risk Services.....\$485.09

Reimbursement of expenses for the Annual Strategic Planning Session of the
Iowa UST Fund Board 7/8/08

No additional billings for outside cost recovery counsel were presented by the Attorney General's office for this meeting. On a motion by Mr. Holcomb and a second by Ms. Lincoln, all billings were approved by a vote of 4-0.

MONTHLY ACTIVITY REPORT

Mr. Scheidel noted that the July activity report and the June and July financials were in the Board packets for the Board members to review.

ATTORNEY GENERAL'S REPORT

Mr. Steward introduced the Board members to Jacob Larson, who was new at the Environmental Division of the Attorney General's Office. He noted that Mr. Larson would not be working on UST Fund matters necessarily. The Board welcomed Mr. Larson to the meeting.

CLAIM AUTHORITY

Mr. Gastineau presented the following claim authority requests:

1. Site Registration 8710480 – Colby Management Co., Windsor Heights

This site was classified high risk for the groundwater vapor pathway. The levels of contamination were presently below site specific target levels (SSTL's). Previous authority to \$75,000 had been granted, and \$65,909.18 was incurred to date. Additional authority to \$125,000 was requested for a site monitoring report (SMR), a possible corrective action design report (CADR), and implementation of the CADR.

A motion to approve the claim authority was submitted by Mr. Beech and seconded by Mr. Holcomb. Approved 4-0.

2. Site Registration 8600154 - Rock C Store, Iowa Falls

This was the second Board report for this site which was classified high risk for the soil leaching to groundwater pathway and for soil vapor to enclosed space for residential sewers. Free product was also present. Soil vapor sampling had failed. Groundwater did not pose a high risk for vapor as it was at a depth of 50 feet below ground surface. A soil vapor extraction (SVE) system would be installed to address the shallow soil contamination near the sanitary service to the site and to remove free product on the water table. DNR would allow use of a local ordinance to clear the high risk soil leaching pathway. Previous authority to \$223,000 had been granted, and \$116,620.21 was incurred to date. Additional authority to \$403,000 was requested for the SMR, CADR, SVE and free product recovery (FPR) activities.

Mr. Holcomb submitted a motion to approve the claim authority, and Ms. Lincoln seconded the motion. Approved 4-0.

3. Site Registration 8601200 – Casey’s Marketing Co., Merrill

This site was classified high risk for groundwater ingestion to an actual drinking well and low risk for protective groundwater source only. The contaminant levels were far below the high-risk SSTL, but did exceed low-risk SSTL. The Iowa UST Fund and Petroleum Marketers Management Insurance Company (PMMIC) shared liability for this site, with the Fund paying 80% of remediation costs. Previous authority to \$75,000 had been granted, and \$84,830.88 was incurred to date. Additional authority to \$110,000 was requested for a SMR.

Mr. Holcomb submitted a motion to approve the claim authority, and Ms. Lincoln seconded the motion, which was approved 3-0. Mr. Beech abstained from the discussion and the vote.

4. Site Registration 8601909 – MRP Properties LLC/Total Petro, Mason City

This site was classified no action required (NAR) with free product. Free product appearance had been transient, primarily in one well. No product had been observed since March 2008. Mr. Gastineau noted that the high water level may mask the contaminant level. Previous authority to \$75,000 had been granted, and \$86,165.15 was incurred to date. Additional authority to \$120,000 was requested for the FPR and monitoring well abandonment.

Mr. Beech inquired about the free product recovery method, and Mr. Gastineau stated that hand baling was used noting that ¾” of free product was the most that had been recovered over the past year in one monitoring well.

Mr. Beech submitted a motion to approve the claim authority, and Mr. Holcomb seconded the motion. Approved 4-0.

5. Site Registration 8606922 – Olson Brothers Service Inc., Waukee

Previously, this site had an eligible claim and received a no further action (NFA) certificate. A new leaking underground storage tank (LUST) number was assigned by the DNR after a tank pull in 2007. Only the largest three UST’s were pulled at that time, and a single soil sample located three feet under the dispenser was above SSTL’s. PMMIC, the insurer, had stated this release pre-existed their coverage. Now, the two remaining UST’s were to be pulled using the Iowa UST Fund tank pull benefit, however responsibility for the release was yet to be determined. Previous authority to \$75,000 had been granted, and \$75,500.75 was incurred to date. Additional authority to \$115,000 was requested for the tank pull, although a risk based corrective action (RBCA) report, a SMR, and a CADR might be required, as well.

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Beech seconded the motion. Approved 4-0.

6. Site Registration 8607200 – The Short Stop, LLC., Worthington

This was the second Board report for this site which was classified high risk. The sandy soil at the site had prevented the excavation from being as effective as was hoped, and the remaining contamination levels were too high for an oxygen-releasing compound (ORC) to be effective. A small air sparge SVE system was added. SSTL's were met in the last monitoring event, but that may be due to high water levels. There were nearby drinking water wells and SSTL's were very low, therefore continued use of the SVE system would be necessary. Previous authority to \$253,000 had been granted, and \$267,386.87 was incurred to date. It was noted that the Administrator's Office had over spent beyond the reserves on this file. Additional authority to \$353,000 was requested for the SMR and operation and maintenance of the SVE system.

Mr. Beech submitted a motion to approve the claim authority, and Mr. Holcomb seconded the motion. Approved 4-0.

7. Site Registration 8811086 – City of George

This was the second Board report for this site which was still classified high risk after some remediation had been completed at the site. Contamination still existed in the vicinity of residential basements and residential sewers. An excavation in the city street and right-of-way was proposed. The costs of the excavation would be high due to the nature of the work in the street and around utilities. No better remedial option was available. Previous authority to \$475,000 had been granted, and \$424,692.84 was incurred to date. Additional authority to \$750,000 was requested for the SMR, implementation of the excavation, and FPR.

Mr. Gastineau explained that previously a remedial system had been installed, but the system was not completely successful and the majority of the contamination was under the street. Also, he noted there were pockets of free product throughout, therefore an excavation was the only remaining option at the site. He also stated that the site was a county site, acquired by tax deed, funded at 100%, as counties are often encouraged to take over abandoned properties to address the risk. The risk to one or two basements in proximity to the contaminant plume could not be precisely determined, as those neighbors would not allow for vapor sampling on their properties. Board members expressed concern for spending so much money to address an uncertain risk of vapors. Mr. Gastineau stated that many sites were remediated for the vapor risk alone.

After additional discussion, Mr. Holcomb submitted a motion to approve the claim authority with the intention to further discuss the issue; however there was not a second for the motion. The motion died.

CONTRACTS ENTERED INTO SINCE THE AUGUST 27, 2008 BOARD MEETING

Mr. Scheidel noted that the Board had entered into several agreements and contracts since the July 8, 2008 Board meeting.

1. 28E agreement with DNR for UST closure contract sites
2. Contract with GeoTek for UST closures

3. Contract with Barker Lemar for UST closures
4. 28E agreement with DNR for NFA funding for 3 specific UST sites
5. 28E agreement with DNR to provide DNR's UST Section with funding for FY08
6. Contract with Apex for community remediation project (CRP) in Rose Hill
7. Contract with GeoTek for CRP in Walnut
8. Contract with Seneca for CRP in Akron

OTHER ISSUES

Mr. Scheidel notified the Board that he would likely have a proposal for a loss portfolio transfer (LPT) from PMMIC at the next Board meeting. He stated the next meeting was scheduled for Thursday, September 25th at 10 A.M. in the Utilities Conference Room 3.

Ms. Douskey explained to the Board that vapor receptors were the primary risk at many of the other sites approved for additional claim authority by the Board; therefore she inquired why the City of George site was not approved since the risk receptor was one of vapor, as well. Mr. Scheidel observed that the high cost represented by the City of George board report highlighted the Board's message that there exists a possible need to evaluate the actual risk posed by vapor to certain receptors.

CORRESPONDENCE AND ATTACHMENTS

Ms. Burke-Boston asked if there was any further business, and there being none, Mr. Beech moved to adjourn, and Mr. Holcomb seconded the motion. By a vote of 4-0, the Board adjourned at 11:41 A.M.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott M. Scheidel". The signature is stylized with a large, looped "S" and a cursive "M".

Scott M. Scheidel
Administrator